DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0370
INTERNATIONAL FUEL TAX AGREEMENT
For The Tax Periods 2003 - 2005

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. International Fuel Tax Agreement – Calculation.

Authority: IC § 6-6-4.1-4(a); IC § 6-6-4.1-9; IC § 6-6-4.1-20; IC § 6-6-4.1-24(b); IC § 6-8.1-3-14; IC § 6-8.1-5-4(a).

The Taxpayer protests the Department's calculation of motor carrier fuel tax pursuant to the International Fuel Tax Agreement.

II. Tax Administration - Ten Percent Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; IC § 6-6-4.1-23; 45 IAC 15-11-2(b)(c).

The Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

The Taxpayer is a corporation primarily engaged in farming. The Taxpayer also operates an ancillary trucking business. After an audit, Indiana Department of Revenue (Department) assessed motor carrier fuel taxes, interest, and penalty against the taxpayer. The Taxpayer protested the assessment and a hearing was held. This Letter of Findings results.

I. Motor Carrier Fuel Tax Agreement – Imposition.

DISCUSSION

The Taxpayer protests the Department's imposition of motor carrier fuel taxes pursuant to the International Fuel Tax Agreement (IFTA).

IFTA is an agreement between various United States jurisdictions and Canada allowing for the equitable apportionment of previously collected motor carrier fuel taxes. The agreement's goal is to simplify the tax, licensing, and reporting requirements of interstate motor carriers such as

the Taxpayer. The agreement itself is not a statute but was implemented in Indiana pursuant to the authority specifically granted under IC § 6-8.1-3-14.

The Taxpayer operated trucks in Indiana. As such, it operated on Indiana highways and consumed motor fuel. Therefore, the Taxpayer was subject to motor carrier fuel IFTA taxes. IC § 6-6-4.1-4(a).

Tax assessments of motor carrier fuel tax under IFTA are presumed to be valid. IC § 6-6-4.1-24(b). The Taxpayer bears the burden of proving that any assessment is incorrect. *Id*. Taxpayers have the duty to maintain books and records and present those to the Department for review upon the Department's request. IC 6-6-4.1-20; IC § 6-8.1-5-4(a).

The Taxpayer was unable to produce any documentation demonstrating that it had paid the proper amount of tax on the motor fuel it used in its operations. Due to the lack of documentation, the Department assessed tax based on the best information available. The Taxpayer's jurisdictional miles were estimated based upon the records available. The Department estimated that the Taxpayer's truck used fuel at the rate of four miles per gallon. By dividing the estimated mileage by four (the number of miles the truck traveled per gallon), the Department estimated the gallons of gasoline used by the Taxpayer.

The Taxpayer did not maintain accurate trip reports. Specifically, the Taxpayer's records did not indicate the trip origins and destinations by city and state, total trip miles, and mileage by jurisdiction. Without these records, the Department was unable to determine the percentage of the miles that the Taxpayer's trucks were driven in Indiana as opposed to miles driven in other states. Therefore, the Department considered the trucks to have been driven only in Indiana. The Department imposed IRP fees based on the presumption that all of the trucks in the Taxpayer's fleet were driven only in Indiana.

The Taxpayer protested the use of four miles per gallon to determine the truck's per gallon of gasoline usage. The Taxpayer argued that its trucks did not actually travel four miles per gallon. Sometimes the trucks were stationary as they waited for the dirt to haul away as the city dug a ditch. Also the trucks were used to carry extremely heavy loads up and down hills. Each of these uses would affect the truck's mileage per gallon. However, IC § 6-6-4.1-9 requires the Department to use four miles per gallon in estimating usage when the Taxpayer's records are inadequate to determine the actual number of miles per gallon of motor fuel used by a particular truck. Therefore, the Department properly used four miles per gallon to determine the Taxpayer's gasoline usage.

After the original audit, the Taxpayer submitted additional documentation. A review of the documentation indicated that the Taxpayer had already paid some of the taxes assessed in the audit. A supplemental audit gave the Taxpayer credit for the taxes it had actually paid during the tax period.

The Taxpayer was unable to sustain its burden of proving that the assessment as adjusted by the supplemental audit was incorrect.

FINDING

The Taxpayer's protest to the assessment as adjusted by the supplemental audit is respectfully denied.

II. Tax Administration - Ten Percent Negligence Penalty.

DISCUSSION

The Taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1; IC § 6-6-4.1-23. Indiana Regulation 45 IAC 15-11-2(b) clarifies the standard for the imposition of the negligence penalty as follows:

> Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The standard for waiving the negligence penalty is given at 45 IAC 15-11-2(c) as follows:

> The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:
>
> (1) the nature of the tax involved;
> (2) judicial precedents set by Indiana courts;
> (3) judicial precedents established in jurisdictions outside Indiana;
> (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc;
> (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.
>
> Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The Taxpayer provided substantial documentation to indicate that its failure to pay the assessed motor carrier tax was due to reasonable cause rather than negligence.

FINDING

The Taxpayer's protest to the imposition of the penalty is sustained.

KMA/LS/DK- November 8, 2007